United States District Court Southern District of Texas

ENTERED

November 14, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS LAREDO DIVISION

KEYLA OLARTE LIMON	§	
individually and by next friend	§	
LAURA SAENZ,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL ACTION NO. 5:22-CV-33
	§	
UNITED STATES OF AMERICA,	§	
	§	
Defendant.	§	

ORDER

The United States Magistrate Judge has issued a Report and Recommendation (the "Report") (Dkt. No. 19). In the Report, the Magistrate Judge concluded that Plaintiff is mentally incompetent and incapable of properly caring for her interests in this litigation (*id.*). Accordingly, the Magistrate Judge recommended that the Court grant Plaintiff's motion to appoint her mother, Laura Saenz, as her next friend in this lawsuit (*id.*).

Plaintiff has waived her objections to the Report (Dkt. No. 19). See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). And, because judicial screening under 28 U.S.C. § 1915(e)(2)(B) remains pending, service on Defendant is not yet proper. See McLemore v. Jacobs, No. 4:21-cv-485, 2022 WL 4230548, at *3 (E.D. Tex. Aug. 14, 2022), R. & R. adopted sub nom. McLemore v. Wal-Mart Stores Tex., LLC, 2022 WL 4227225 (E.D. Tex. Sept. 13, 2022) ("[A] court may withhold service . . . pending the court's screening of the complaint under Section 1915."). Thus, Defendant has not appeared in this

case.

Having reviewed the Report, the Court agrees with its ultimate conclusion. See United States v. Raddatz, 447 U.S. 667, 683 (1980) (holding the district judge retains discretion to evaluate the uncontested portions and afford them "such weight as their merit commands"); see United States v. Smith, 354 F. App'x 99, 101 (5th Cir. 2009). Therefore, the Report is hereby ADOPTED. Plaintiff's motion to appoint next friend (Dkt. No. 5) is GRANTED. Plaintiff's mother, Laura Saenz, is hereby APPOINTED as Plaintiff's next friend in this action.

The Clerk of Court is **DIRECTED** to add Laura Saenz as a Plaintiff to this action.

It is so **ORDERED**.

SIGNED November 14, 2022.

Marina Garcia Marmolejo United States District Judge